

AMENDED IN ASSEMBLY APRIL 25, 2011  
AMENDED IN ASSEMBLY MARCH 23, 2011  
AMENDED IN ASSEMBLY FEBRUARY 16, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 81**

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**Introduced by Assembly Member Beall  
(Coauthor: Assembly Member Jeffries)**

January 4, 2011

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An act to add and repeal Section 6357.8 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 81, as amended, Beall. Sales and use taxes: exemptions: fuel and petroleum products: air common carriers.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from that tax, including an exemption for the gross receipts from the sale of, and the storage, use, or other consumption of, fuel and petroleum products sold to an air common carrier for immediate consumption or shipment in the conduct of its business on an international flight.

This bill would, on or after January 1, 2012, exempt from those state taxes, gross receipts *or sales price* in excess of the average spot price over the previous 5 years, per gallon, derived from the sale in this state of, and the storage, use, or other consumption in this state of, fuel and

petroleum products sold to or purchased by an air common carrier for consumption or shipment in the conduct of its business on a domestic flight, as specified. The bill would repeal these provisions on January 1, 2017, unless the Employment Development Department makes a specified finding, in which case the bill would repeal these provisions on January 1, 2020.

This bill would also require the State Board of Equalization, beginning on January 1, 2013, and annually thereafter, to submit a report to the Legislature setting forth the state fiscal impact of the exemption, *and would require the Employment Development Department to submit a report to the Legislature and the Department of Finance on or before October 1, 2016, determining whether 2,000 or more jobs have been or are expected to be created by the bill on or before January 1, 2017.*

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes, unless the governing body of the taxing county, city, or district authorizes an exemption and provides notice to the board on or before December 1, 2011.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6357.8 is added to the Revenue and  
2 Taxation Code, to read:  
3 6357.8. (a) (1) On and after January 1, 2012, and before  
4 ~~December 31, 2019~~ *January 1, 2020*, there are exempted from the  
5 taxes imposed by this part, ~~gross receipts~~ *the gross receipts or*  
6 *sales price* in excess of the average spot price over the previous  
7 five fiscal years, per gallon, as determined by the board, derived  
8 from the sale in this state of, or the storage, use, or other  
9 consumption in this state of, fuel and petroleum products sold to  
10 or purchased by an air common carrier for consumption or

1 shipment in the conduct of its business as an air common carrier,  
2 on a domestic flight.

3 (2) For *application in* the 2011–12 fiscal year, the board shall,  
4 on or before October 1, 2011, determine the average spot price  
5 over the previous five fiscal years, per gallon, derived from the  
6 sale in this state of, or the storage, use, or other consumption in  
7 this state of, fuel and petroleum products sold to or purchased by  
8 an air common carrier for consumption or shipment in the conduct  
9 of its business as an air common carrier, on a domestic flight.

10 (3) For *application in* the 2012–13 fiscal year and each fiscal  
11 year thereafter, the board shall, on or before March 1 preceding  
12 that fiscal year determine the average spot price over the previous  
13 five fiscal years, per gallon, derived from the sale in this state of,  
14 or the storage, use, or other consumption in this state of, fuel and  
15 petroleum products sold to or purchased by an air common carrier  
16 for consumption or shipment in the conduct of its business as an  
17 air common carrier, on a domestic flight.

18 (b) To qualify for the exemption, the air common carrier shall  
19 furnish to the seller an exemption certificate in the form prescribed  
20 by the board. Acceptance in good faith of that certificate shall  
21 relieve the seller from liability for that portion of the sales tax  
22 exempted under this section.

23 (c) For purposes of this section, the following definitions apply:

24 (1) “Air common carrier” has the same meaning as that set forth  
25 in Section 23046 of the Business and Professions Code.

26 (2) “Domestic flight” means a flight whose final destination is  
27 a point inside of the United States, ~~including its territories~~.

28 (d) Any air common carrier claiming exemption under this  
29 section that is not required to hold a valid seller’s permit, shall be  
30 required to register with the board and obtain a fuel exemption  
31 registration number, and shall be required to file returns as the  
32 board may prescribe, either if the board notifies the carrier that  
33 returns must be filed or if the carrier is liable for taxes based upon  
34 consumption or transportation of fuel or petroleum products  
35 erroneously claimed as exempt under this section.

36 (e) An air common carrier claiming an exemption under this  
37 section, upon request, shall make available to the board records,  
38 including, but not limited to, a copy of a log abstract, an air waybill,  
39 or a cargo manifest, documenting its consumption or transportation  
40 of the fuel or petroleum products on a domestic flight and the

1 amount claimed as exempt. If the carrier fails to provide these  
2 records upon request, the board may revoke the carrier's fuel  
3 exemption registration number.

4 (f) The board may require any air common carrier claiming an  
5 exemption under this section and required to obtain a fuel  
6 exemption registration number, to place with it such security as  
7 the board may determine pursuant to Section 6701.

8 (g) Pursuant to this section, any use of the fuel and petroleum  
9 products by the purchasing carrier, other than that incident to the  
10 delivery of the fuel and petroleum products to the carrier and the  
11 consumption or transportation of the fuel and petroleum products  
12 by the carrier on a domestic flight for use in the conduct of its  
13 business as a common carrier, or a failure of the carrier to document  
14 its consumption or transportation of the fuel and petroleum  
15 products on a domestic flight, shall subject the carrier to liability  
16 for payment of sales tax as if it were a retailer making a retail sale  
17 of the property at the time of that use or failure, and the sales price  
18 of the property to it shall be deemed to be the gross receipts from  
19 the retail sale.

20 (h) (1) Notwithstanding any provision of the Bradley-Burns  
21 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing  
22 with Section 7200)) or the Transactions and Use Tax Law (Part  
23 1.6 (commencing with Section 7251)), the exemption established  
24 by this section shall not apply with respect to any tax levied by a  
25 county, city, or district pursuant to, or in accordance with, either  
26 of those laws, unless approved by the local government that would  
27 otherwise receive the revenues derived from the taxes imposed  
28 under those laws.

29 (2) The governing body of any county, city, or district may enact  
30 an ordinance to authorize the exemption as described in subdivision  
31 (a) with respect to taxes levied by that entity, and shall notify the  
32 State Board of Equalization of this action on or before December  
33 1, 2011.

34 (i) (1) On January 1, 2013, and annually thereafter, the State  
35 Board of Equalization shall submit a report to the Legislature  
36 setting forth the state fiscal impact of the exemption allowed under  
37 this section.

38 (2) (A) *The Employment Development Department shall submit*  
39 *a report to the Legislature and the Department of Finance on or*  
40 *before October 1, 2016, determining whether 2,000 or more jobs*

1 *have been created, or are expected to be created, on or before*  
2 *January 1, 2017, as a result of this section.*

3 *(B) The requirement for submitting a report imposed under*  
4 *subparagraph (A) is inoperative on October 1, 2020, pursuant to*  
5 *Section 10231.5 of the Government Code.*

6 ~~(2)~~

7 (3) A report to be submitted pursuant to ~~paragraph (1)~~  
8 *paragraphs (1) and (2)* shall be submitted in compliance with  
9 Section 9795 of the Government Code.

10 (j) This section shall remain in effect only until January 1, 2017,  
11 and as of that date is repealed, unless the Employment  
12 Development Department makes a finding on or before January  
13 1, 2017, that 2,000 or more jobs have been created as a result of  
14 this section, in which case this section shall remain in effect until  
15 January 1, 2020, and as of that date is repealed.

16 SEC. 2. Notwithstanding Section 2230 of the Revenue and  
17 Taxation Code, no appropriation is made by this act and the state  
18 shall not reimburse any local agency for any sales and use tax  
19 revenues lost by it under this act.

20 SEC. 3. This act provides for a tax levy within the meaning of  
21 Article IV of the Constitution and shall go into immediate effect.